

The respondent requests the Appeals Board to review an Order entered on March 15, 1994, by Administrative Law Judge Shannon S. Krysl, which ordered respondent to pay attorneys' fees to claimant's attorneys of record during proceedings held on an Application for Review and Modification filed by claimant. The one issue raised by the respondent for the Appeals Board review is the extent of attorneys' fees awarded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

As a preliminary matter, all the parties agreed that the Order of Administrative Law Judge Shannon S. Krysl awarding attorneys' fees pursuant to K.S.A. 44-536(g) is a final order and is not a preliminary order. Such an order is then subject to review by the Appeals Board pursuant to K.S.A. 44-551(b)(1).

This request for attorneys' fees came on before the Administrative Law Judge by a motion filed by the claimant pursuant to K.S.A. 44-536(g). The claimant requested that the Administrative Law Judge order respondent to pay claimant's attorney, Kenton Wirth, fees for 17.03 hours of work at \$125.00 per hour for a total of \$2,128.75, until his withdrawal from representation on November 8, 1993. Claimant's present attorney, Robert R. Lee, requested payment of 2 hours at \$125.00 per hour for a total of \$250.00.

Both Mr. Wirth and Mr. Lee represented the claimant in an Application for Review and Modification of the original Award affirmed by the District Court on August 12, 1992. The Application for Review and Modification requested a vocational rehabilitation referral alleging that the claimant's work disability had increased due to the claimant being laid off from his employment with the respondent. The Administrative Law Judge denied the request after a hearing in the Order dated January 26, 1993. A Director's Review was requested and the Director affirmed the Administrative Law Judge in an Order dated August 17, 1993, which was subsequently affirmed by the District Court.

This attorneys' fee request is brought pursuant to K.S.A. 44-536(g) which generally provides that an attorney who renders services to an employee in connection with an Application for Review and Modification shall be entitled to reasonable attorney's fees in addition to attorney's fees received by contract in connection with the original claim. If the services result in an additional award of compensation, the attorney's fees shall be paid from such additional compensation. If no additional compensation is awarded, attorney's fees shall be paid by the employer.

In the present case, the requested benefit, i.e. vocational rehabilitation referral, was denied. As no additional compensation was awarded from which payment of attorneys' fees could be deducted, claimant's attorney filed this motion, which is the subject of this review, requesting payment by the respondent. Respondent argues that K.S.A. 44-536(g) only applies when additional compensation is awarded or when benefits, such as medical benefits, are awarded. Respondent argues that this request was for a vocational rehabilitation referral which was subsequently denied and therefore no attorneys' fees are due. Additionally, the Application for Review and Modification for vocational rehabilitation referral should not have been requested. Such request was unreasonable and resulted in unnecessary litigation. Respondent further contends that there was absolutely no change in circumstances in reference to the claimant to warrant a filing of an Application for Review and Modification. In regard to the amount of attorneys' fees, if awarded, respondent submits that \$80.00 per hour is the reasonable and customary charge for the Wichita, Kansas area and not the \$125.00 per hour request of the claimant.

Claimant takes the position that he had good cause to file an Application for Review and Modification in this matter as he was laid off by the respondent on January 19, 1993,

for medical reasons which increased his permanent partial general disability award based on functional impairment to a work disability which made him eligible for vocational rehabilitation benefits. In regard to the attorneys' fee request, claimant argues that K.S.A. 44-536(g) is clear and unambiguous and requires respondent to pay attorney fees when an attorney renders services for a claimant in connection with an Application for Review and Modification and no additional compensation is awarded. In the present case, claimant further contends that the reasonable hourly rate for attorney services should be paid at \$125.00 per hour as requested.

The Appeals Board finds that the layoff of the claimant by the respondent for medical reasons was a change in circumstances which warranted a filing of the Application for Review and Modification. With respect to the request for attorneys' fees, the Appeals Board finds and affirms the Administrative Law Judge's decision to order the respondent to pay attorneys' fees as K.S.A. 44-536(g) is clear and unambiguous in that it requires the respondent to pay reasonable attorneys' fees under these circumstances. The respondent did not challenge the number of hours that the claimant's attorneys submitted for services performed. The Administrative Law Judge ordered the respondent to pay an hourly rate of \$100.00 per hour instead of the claimant's request of \$125.00 per hour or the respondent's request of \$80.00 per hour. The Kansas Supreme Court has consistently held that the trial court is an expert on the subject of the value of legal services and may apply its own knowledge and professional experience in determining the value of the services rendered. See City of Wichita v. Chapman, 214 Kan. 575, 587-588, 521 P.2d 589 (1974); Courtright v. Cavert, 125 Kan. 66, 69, 262 Pac. 587 (1928). Taking into consideration the Administrative Law Judge's experience and knowledge as to reasonable and customary attorney fees in the Wichita, Kansas area, the Appeals Board finds that the \$100.00 hourly rate ordered by the Administrative Law Judge for attorney services is appropriate.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl, dated March 15, 1994, ordering respondent to pay attorneys' fees in the amount of \$1,703.00 to Kenton Wirth and \$200.00 to Robert Lee is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, 1861 N. Rock Road, Suite 320, Wichita, KS 67206
Frederick L. Haag, 700 Fourth Financial Center, Wichita, KS 67202
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director